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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

BEAUTIFUL GATE HOLY CHURCH
OF DELIVERANCE, et al.

Plaintiffs and Respondents,

v.

AVA WHITMIRE,

Defendant and Appellant.

A152597

(Alameda County
Super. Ct. No. RG15764483)

Ava Whitmire appeals from a judgment resolving a dispute over ownership and control of property in Oakland that was previously used as a church (the church property). Whitmire, who is representing herself on appeal, has failed to articulate a valid claim of error. Accordingly, we will affirm the judgment.

I. Background

A. The Parties

Beautiful Gate Holy Church of Deliverance (Beautiful Gate) was incorporated in California as a nonprofit religious corporation in 1971. In 1997, Beautiful Gate acquired grant deeds to the church property that became the subject of this litigation. Marcello Jack Sowell was a founder of Beautiful Gate and its first pastor. Pastor Sowell became incapacitated with dementia in 2001. Between 2006 and 2008, Beautiful Gate became inactive, and by 2014 it had permanently lost its tax exempt nonprofit status.

Respondent Scott Phipps has been the duly appointed conservator of Pastor Sowell since May 2012. In January 2014, Phipps was also appointed director of Beautiful Gate and charged with winding up the corporation and selling its property.

In her appellate brief, Whitmire describes herself as a member and officer of Beautiful Gate. In the lower court, she alleged that she is the agent of Beautiful Gate and spiritual leader of its members.

B. The Claims Against Whitmire

In April 2015, Phipps and Beautiful Gate (collectively Phipps) filed a quiet title action against Whitmire, the “God All Over Crisis Center,” and others (collectively Whitmire). In a first amended complaint, Phipps alleged that Whitmire forcibly entered church property, refusing to leave, and when police were called to the scene, Whitmire produced a fraudulent deed purporting to transfer ownership of the church property to herself as a gift. Phipps sought declaratory, injunctive, and monetary relief pursuant to four causes of action: (1) quieting title to church property; (2) cancellation of instrument; (3) trespass; and (4) ejectment.

In March 2016, Phipps’s quiet title action was consolidated with another case he filed against Whitmire for wrongful detainer, with the quiet title action designated as the lead case.

In March 2017, Phipps filed a motion for summary judgment or summary adjudication. In June 2017, the trial court granted summary adjudication of his claims to quiet title to church property in favor of Beautiful Gate, and to cancel deeds to the church property executed by Whitmire. The court denied summary adjudication as to the other causes of action, which prayed for money damages, because there were material issues of fact regarding the amount of damages Phipps could recover.

In July 2017, Phipps waived rights to monetary recovery. In August, the trespass claim and forcible detainer action were both dismissed voluntarily. In September, the court granted Phipps’s renewed motion for summary judgment based on changed facts.

C. Whitmire's Cross-Claims

When Phipps initiated this action in April 2015 by filing a quiet title complaint on behalf of Beautiful Gate, Whitmire responded by filing a pro per cross-complaint against Phipps. Whitmire used a Judicial Council form, which she completed by hand in writing that is difficult to read. She checked a box indicating that her cause of action was for “Apportionment of Fault” and attached forms for causes of action for declaratory relief and fraud. The trial court sustained a demurrer to this cross-complaint, granting Whitmire leave to amend.

In November 2016, Whitmire, who had retained counsel, filed another original cross-complaint in which she named herself, Beautiful Gate, and two non-profit religious organizations as cross-complainants. Whitmire alleged that she was the spiritual leader and agent of Beautiful Gate, its board, and its members. She disputed Phipps's authority to act on behalf of Beautiful Gate, alleging the order appointing him director was void for lack of notice. She further alleged that she had attempted to address the legal and governmental issues that were plaguing Beautiful Gate by using her authority as its agent to transfer ownership of the church property to God All Over Crisis Center, another non-profit religious organization. Whitmire incorporated these allegations into causes of action for (1) quiet title; (2) cancellation of the order appointing Phipps director of Beautiful Gate; (3) removal of director; (4) confirmation of board election; (5) breach of fiduciary duty; (6) declaratory relief; and (7) forcible entry.

In April 2016, the trial court sustained a demurrer to this second version of Whitmire's original cross-complaint. Although Whitmire was granted leave to amend, the court ruled that she could not use this action to collaterally attack the order appointing Phipps director of Beautiful Gate, which had been issued in Pastor Sowell's conservatorship case. The court also ruled that Whitmire did not have authority to assert claims on behalf of Beautiful Gate and could not name Beautiful Gate as a cross-complainant.

Later in 2016, the trial court granted a motion to strike Whitmire's first amended cross-complaint and sustained a demurrer to her second amended cross-complaint, both

times granting leave to amend. However, in February 2017, the court sustained a demurrer to Whitmire's third amended cross-complaint without leave to amend.

D. The Judgment

On September 25, 2017, the court entered final judgment in favor of Beautiful Gate (plaintiff) and against Whitmire, aka Ava Renee Whitmire, aka Ava Nelson, and God All Over Ministries, dba God All Over Crisis Center (defendants). Findings set forth in the judgment included that (1) plaintiff owns the church property, and defendants have no "interest of any kind in said property"; (2) defendants are "forever enjoined" from claiming an interest in the church property; (3) all deeds executed on the property by defendants are "cancelled and declared null and void" and are to be delivered to the court within 10 days for cancellation; (4) possession of the church property is granted to plaintiff; (5) defendants are to be ejected from the property and are enjoined from entering or otherwise possessing it; and (6) notices of Lis Pendens on the church property recorded by defendants are expunged.

III. Discussion

As appellant, Whitmire has the burden of overcoming a presumption that the judgment is correct by affirmatively demonstrating prejudicial error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564–566.) "To demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.] When a point is asserted without argument and authority for the proposition, 'it is deemed to be without foundation and requires no discussion by the reviewing court.' " (*In re S.C.* (2006) 138 Cal.App.4th 396, 408.) These rules of appellate procedure apply to Whitmire even though she elected to represent herself on appeal. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1247.) The law affords pro per litigants " 'the same, but no greater consideration than other litigants and attorneys.' " (*Ibid.*)

Here, Whitmire has not overcome the presumption of correctness because she fails to articulate a cognizable claim of error in her appellant's opening brief. We trace this failure to three material defects in Whitmire's brief.

First, rule 8.204(a)(2) of the California Rules of Court¹ sets forth mandatory requirements for an appellant’s opening brief, which must: “(A) State the nature of the action, the relief sought in the trial court, and the judgment or order appealed from; [¶] (B) State that the judgment appealed from is final, or explain why the order appealed from is appealable; and [¶] (C) Provide a summary of the significant facts limited to matters in the record.” Whitmire’s brief does not contain any of this information.

Second, rule 8.204(a)(1)(B) requires that each point in an appellate brief must be stated “under a separate heading or subheading summarizing the point,” and supported by an argument. Here, Whitmire’s appellate brief contains a table of contents with a list of argument headings that refer to the following subjects: (1) Phipps’s alleged failure to account for his actions as conservator for Pastor Sowell and his property; (2 & 3) a renewed motion to remove Phipps as director of Beautiful Gate; (4) a court order that is void on its face because it was not served on persons alleged to have been members of Beautiful Gate; and (5) a court order that is void because it violates California Corporations Code provisions for dissolving a non-profit religious corporation. The points made in these headings are not supported by coherent legal arguments, but they appear to be targeted at orders that were made in Pastor Sowell’s conservatorship proceeding, which is not this case.

Third, rule 8.204(a)(1)(C) establishes the fundamental rule that any appellate brief must support a reference to a matter with a proper citation to the appellate record. Here, Whitmire’s brief does not contain a single reference to the appellate record, which includes a 14-volume Clerk’s Transcript on Appeal. Occasionally, Whitmire refers to an exhibit filed with her brief, which does not comply with the requirements for using exhibits set forth in rule 8.204(d), although we note that some of her exhibits appear to be copies of documents from the appellate record.

These rule violations have substantive implications. Whitmire’s failure to provide the necessary background information required by rule 8.204(a)(2) makes it impossible

¹ All references to rules are to the California Rules of Court.

for us to identify an appealable issue; i.e., an order embraced by the judgment *in this case* that is subject to challenge on appeal. Each of Whitmire's headings is accompanied by a laundry list of issues, which appear to relate to Pastor Sowell's conservatorship, some new and some already adjudicated in that collateral proceeding. Because Whitmire fails to cite the appellate record, her arguments are completely untethered to the present action.

Two dispositive consequences flow from Whitmire's failure to identify an appealable order, articulate any claim of legal error, or support her factual assertions with references to this record. First, to the extent that Whitmire purports to challenge appealable orders encompassed by the judgment in this case, her claims are hereby deemed waived. (See *Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1074; *Kim v. Sumitomo Bank of Calif* (1993) 17 Cal.App.4th 974, 979.) Second, Whitmire has failed to overcome the presumption that the judgment is correct. (*Denham v. Superior Court, supra*, 2 Cal.3d at pp. 564–566.)

IV. Disposition

The judgment is affirmed. In the interests of justice, the parties are to bear their own costs on appeal.

Tucher, J.

We concur:

Pollak, P.J.

Streeter, J.